IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPLICATION NO.24 of 2003

The Commissioner of Central Excise ..Applicant.

V/s.

M/s.Standard Drums Manufactures Co. & Anr. ..Respondents.

Mr.P.S.Jetly i/b. T.C.Kaushik for applicant.

Mr.Madhur Baya for respondents.

CORAM : V.C. DAGA AND J.P.DEVADHAR, JJ.

DATED : 24TH AUGUST, 2005.

P.C. :-

1. Heard the learned counsel for the petitioner. By this application, the Revenue sought to raise the question framed hereinbelow :-

> " Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that as long as the weight of the sheets received by manufacturer and the weight of the Coils received by the dealer tally, the assessee is eligible to avail modvat credit, even though the invoice under which modvat credit is availed under Rule 57A show the goods (inputs) as HF / CR Coils, when admittedly the assessee has not received the same."

2. Having heard the learned counsel for the rival parties and having seen the findings recorded by

the Tribunal, we must hasten to add that the Tribunal has recorded the finding of fact in para 5 of its order holding that the dealer had send the coils to the cutter's premises and from there sheets were taken to the manufacturer. The Tribunal further reiterated in para 9 of its order the very same fact in the following words :-

> " For the goods under consideration by us we would say that as long as weight of the sheets received by the manufacturer, adopting the approval contains in the trade notice, that as long as the weight of the sheets and the weight of the coils tally and reasonably corresponds in time between the despatch of the sheets by the dealers and the receipt by the manufacturer correlation has been established with the required degree. We note in this case the absence of any allegation or evidence that any non duty paid coils were received by the dealer or the cutters. We also note that there is not the slightest evidence as to what happened to the numerous coils that the dealer received. It is not alleged that they issued invoices in addition to the ones under consideration in respect of the goods or sheets or coils obtained from them. "

3. Considering the aforesaid findings of fact recorded by the Tribunal, no substantial question of law arises from the order of the Tribunal warranting reference to this Court. The application, therefore, is dismissed in limine with no order as to costs.

(V.C. DAGA, J.)

(J.P.DEVADHAR, J.)